

**Remarks/Argument**

**A. Claims in the Case**

Claims 1-35 are pending. Claims 14-16 have been amended.

**B. The Claims Are Not Obvious Pursuant to 35 U.S.C. § 103(a)**

The Examiner rejected claims 1-9, 12-24, 27-30, and 32-35 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,450,626 to Sorrels (hereinafter "Sorrels") in view of U.S. Patent No. 5,231,700 to Cutshall (hereinafter "Cutshall"). Applicant respectfully disagrees with these rejections.

In order to reject a claim as obvious, the Examiner has the burden of establishing a *prima facie* case of obviousness. *In re Warner et al.*, 379 F.2d 1011, 154 U.S.P.Q. 173, 177-178 (C.C.P.A. 1967). To establish a *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP § 2143.03.

The Examiner states: "Cutshall discloses a cut and puncture resistant guard for a digit (30-34) of the hand including a protective, penetration resistant portion (40) which is colored differently from the less protective portion (21), col. 3, lines 60-61 and as shown in figure 3, so that the guard is properly worn about the hand."

Cutshall states: "To aid in quick determination of the correct size, the cut resistant glove can be marked with size indicators (eg. printing small, medium, large, extra large on the glove 20), or sizes can be indicated by color coding of the glove 20 of selected regions of the glove. In one preferred embodiment the wrist covering 28 is colored white for small sized gloves, yellow for medium sized gloves, blue for large sized gloves, and red for extra large sized gloves."

Figure 3 of Cutshall depicts puncture resistant covering (40) and back side (25) made of cut-resistant yarn (21).

Cutshall does not appear to teach or suggest that different portions of a glove are of different colors. In addition, Cutshall does not appear to teach or suggest that a color of the glove allows the glove to be “properly worn about the hand,” as stated by the Examiner. Applicant submits that the handedness of gloves obviates the Examiner’s statement that the color of the glove allows the glove of Cutshall to be “properly worn about the hand.” Applicant further submits that Cutshall appears to describe a protective portion designed to unambiguously cover a ventral region of the hand. Thus, a location of the protective portion of the glove may not be determined by a wearer at the time of use.

Applicant’s Specification states: “The color difference between the penetration resistant portion and the less penetration resistant portions of a protective guard may allow a medical practitioner to maintain awareness of the location of a protective portion of the guard during a medical procedure.” (Specification, page 6, lines 14-17) Applicant’s Specification further states: “A color difference between a protective portion of the protective guard and a less protective portion of the guard may allow a medical practitioner to visually confirm that the protective portion of the guard is positioned where desired.” (Specification, page 7, line 31 through page 8, line 3) Applicant’s amended Specification states: “An advantage of a protective guard is that the protective guard may be multicolored. A protective portion of the protective guard may be a different color than less protective portions of the guard. For example, a dorsal side of a protective guard that is puncture and penetration resistant may have a green color, while a ventral side of the protective guard may have a tan color. The multi-colored guard may provide a conscious reminder to a medical practitioner of the protective portion of the guard.” (Specification, page 9, lines 9-14)

Applicant’s Specification states:

Material that forms the protective portion 46 of a protective guard 20 may be dyed a different color than the material that forms the less protective

portion 48. Alternately, the protective portion 46 may be painted a different color than the less protective portion 48. The color of the protective portion 46 may be a vivid color that results in a marked contrast with the color of the less protective portion 48 of the protective guard 20, and with the color of the user's finger 22 or thumb 26. The color of the protective portion 46 may be, but is not limited to, red, orange, yellow, green, or blue. The color of the less protective portion 48 may be the natural color of the material used to form the portion, or any color that provides a noticeable contrast with the color of the protective portion 46 and/or a noticeable contrast with the color of a user's skin. Preferably, the colors of the protective portion 20 and the less protective portion 48 of the protective guard 20 provide a contrast that allows a medical practitioner to distinguish between the two portions when the protective guard is covered by a surgical glove 52 or other covering. The colors of the protective portion 46 and the less protective portion 48 may contrast with the skin color of a user's fingers 22 and/or thumb 26 so that a user may easily visualize the limits of protection afforded by the protective guard 20. (Specification, page 15, lines 9-24)

Claim 1 describes a combination of features including: "a protective portion of the body configured to be penetration resistant; and a less protective portion of the body adjacent to the protective portion; wherein the protective portion is of a different color than the less protective portion." Claim 21 describes a combination of features including: "wherein a color of the protective portion contrasts with a color of skin of the digit." Claim 27 describes a combination of features including: "coloring the protective portion so that the protective portion contrasts with a color of the digit." Claim 32 describes a combination of features including: "wherein the protective portion comprises a color that is visibly distinct from a color of the digit."

Applicant submits that Cutshall describes color coding only as a means to distinguish between gloves of various sizes. Applicant further submits that Figure 3 of Cutshall does not appear to teach or suggest that the different materials of the protective glove are of a different color. Cutshall does not appear to teach or suggest that a color of the protective portion contrasts with a color of skin of the digit. Applicant submits that the combination of the cited art does not appear to teach or suggest at least the above-quoted features of claims 1, 21, 27, and 32, in combination with the other features of the respective claims. Applicant respectfully requests removal of the rejections of these claims and the claims dependent thereon.

With respect to Sorrels, the Examiner states: "A bead of material is formed between the protective and less protective portions as shown in figure 3, with the protective portion having a longer length than the less protective portion as shown in figures 2 and 4." Applicant submits that Figure 3 of Sorrels does not appear to teach or suggest the bead of material shown in Figures 2, 3, 8, 9, 10, and 11 of Applicant's Specification.

With respect to Figure 3, Applicant's Specification states: "The bead 68 may be an overlapping layer of the second material." (Specification, page 17, lines 19-20) Applicant's Specification further states: "A bead 68 between a protective portion 46 and a less protective portion 48 of a tube 54 may serve as a guide for cutter 70 to ensure that the tube is properly oriented relative to a cutter or cutters of the cutting machine." (Specification, page 17, lines 25-28) Applicant submits that the combination of the cited art does not appear to teach or suggest at least the features of claim 35, including, but not limited to: "a bead of material formed between the protective portion and the less protective portion." Applicant respectfully requests removal of the rejection of claim 35.

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). In addition, Applicant submits that many of the claims dependent on claims 1, 21, 27, and 32 are separately patentable.

Claim 2 describes a combination of features including: "wherein a color of the protective portion is visually distinct from a color of the less protective portion." Claim 24 describes a combination of features including: "a less protective portion, the less protective portion having a color visually distinct from the color of the protective portion." Claim 33 describes a combination of features including: "wherein the protective guard includes a less protective portion, the less protective portion comprising a color that is visibly distinct from the color of the protective portion." Applicant submits that, as described above, the combination of the cited art does not appear to teach or suggest at least the above-quoted features of claims 2, 24, and 33, in

combination with the other features of the respective claims. Applicant further requests removal of the rejections of these claims.

Claims 17 and 23 describe a combination of features including: "a bead of material formed between the protective portion and the less protective portion." Applicant submits that, as described above, the combination of the cited art does not appear to teach or suggest at least the above-quoted features of claims 17 and 23, in combination with the other features of the respective claims. Applicant further requests removal of the rejections of these claims.

**C. Additional Comments**

Amendments to the Specification replace "distal" with "dorsal" as appropriate. Amendments to the claims replace "distal" and "back" with "dorsal" as appropriate. Applicant submits that the pending claims are in condition for allowance. Favorable consideration is respectfully requested.

Applicant believes that no fees are due with the filing of this response. If an extension of time is needed, Applicant requests the appropriate extension of time. If any fees are due, please appropriately charge those fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account Number 50-1505/5588-00101/EBM.

Respectfully submitted,



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Date: Sept. 17, 2003